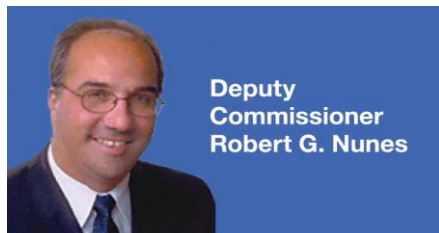


City and Town - March 21st, 2013

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City & Town

Amy Pitter, Commissioner • Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



Deputy
Commissioner
Robert G. Nunes

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City & Town is published by the Massachusetts Department of Revenue's Division of Local Services (DLS) and is designed to address matters of interest to local officials.

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Recent Hyperlink Issues

City and Town Editorial Board

On behalf of DLS, please accept our apologies for any recent difficulties you may have had accessing links provided through DLS Alerts. The issue was related to an internal firewall and has subsequently been resolved. Should you ever have any concerns or future difficulties, please feel free to contact us at DLS_Alerts@dor.state.ma.us. We apologize again for any inconvenience this may have caused.

Reminder: April 1st, 2013 is the Deadline to Certify Entity Tax Status for Corporations Book

DOR Announcements

The Department of Revenue (DOR) now requires all business entities to certify their tax status by April 1st, 2013 through the online application, WebFile for Business, located at the [Corporation Book Status Application](#). For details, see [Directive 12-5](#) or [FAQ's](#).

The annual Corporations Book is used by local assessors to determine which businesses qualify for various property tax exemptions afforded entities that are classified as corporations for federal and state tax purposes. Recent Corporations Books have been subject to inaccuracies in part because of changes in state tax laws. In order to get updated and accurate information, DOR is compiling the 2013 listing utilizing information that business entities report in the online application.

A corporation that does not complete the online application by April 1st may be omitted from the Corporations Book and may not receive personal property tax exemptions to which it would otherwise be entitled.

If you have never used WebFile for Business, you will need to register your business to access the application for certification. Please note that it can take several days to confirm registration for WebFile for Business.

Independent Investigation of Bidders Permissible

James Crowley, Esq. - Bureau of Municipal Finance Law

The bid law was the focus of the Supreme Judicial Court decision of *Barr Incorporated v. Town of Holliston*, 462 Mass. 112 (2012). In 2008, the town of Holliston went out to bid for the construction of a new police station. The plaintiff in this case, Barr Inc., submitted the lowest bid. Under Massachusetts General Law (MGL) Chapter 149, any contract for construction of a public building in excess of \$100,000 must be awarded to the lowest responsible and eligible general bidder. M.G.L. Ch. 149 further requires bidders to obtain a certificate of eligibility from the Department of Capital Asset Management (DCAM) which is granted based on the bidder's performance in past and present contracts. Bidders must also submit a self-completed "update statement" as to their current work.

The town of Holliston reviewed information on Barr, Inc. in its DCAM certification file and also conducted an internet search. Concerned about some of the findings, the town administrator requested a Holliston police detective conduct an independent investigation into the plaintiff's past contracts. Most of the communities contacted by the police detective gave negative reviews about the plaintiff's work. Upon learning of these poor reports, the town's building committee voted to find the plaintiff not to be a responsible bidder. It was then decided to award the construction contract to the second-lowest bidder.

The plaintiff filed suit in Superior Court seeking injunctive relief and alleged that the town's investigation was outside the scope of M.G.L. Ch. 149. The plaintiff claimed the town could only consider DCAM's records and the update statement. At issue then was whether the town of Holliston as an awarding authority could conduct an independent investigation into bidder responsibility. The Superior Court judge ruled in favor of the town and the plaintiff appealed to the Supreme Judicial Court.

The Supreme Judicial Court examined M.G.L. Ch. 149 and found no statutory basis to prevent the town from conducting an independent investigation into bidder responsibility. Admittedly, under the terms of M.G.L. Ch. 149, a successful bidder would have to be certified by DCAM and an "update statement" would have to be furnished. Yet, according to the Court, an independent investigation permits a municipality to make a more reasoned determination as to bidder responsibility especially since DCAM's certification file may include only a sample of a bidder's public sector work and may exclude a significant amount of work history in the private sector.

The plaintiff, however, contended that an independent investigation by the municipal awarding authority, outside the DCAM information, runs the risk that preferred bidders would not be subject to extensive background checks but disfavored bidders would be thoroughly investigated.

The Supreme Judicial Court downplayed this risk since a disappointed bidder could file a complaint with the Attorney General or sue in Superior Court. In addition, the awarding authority must also notify DCAM that the low bidder was not accepted which could lead to a DCAM investigation of the contract award.

Consequently, the Court held that the bid laws did not preclude awarding authorities from conducting their own investigations on bidders. A municipality could look outside the records kept by DCAM. Barr Inc., therefore, lost its challenge in court.

The Operational Service Division's Municipal Procurement Program

Kristine Resendes - OSD Communications Manager

The Municipal Procurement Program (MPP), created by Governor Deval Patrick in accordance with Executive Order 533, was established with the Commonwealth's Inspector General and Commonwealth municipalities. The purpose of the MPP is to provide the following ongoing services for Commonwealth cities and towns.

- Outreach to municipalities and survey of their unique procurement needs that are not being fulfilled by current statewide, department or their own contracts;
- Procurement or delegation of procurement to other departments, of high volume goods and services that are needed by Commonwealth cities and towns;
- Coordination and aggregation of planned municipal and state agency spending from statewide or department contracts; and
- Provision of training to cities and towns on how to use statewide and department contracts and how to navigate the Commonwealth's procurement processes and systems.
- Leveraging the Commonwealth's buying power to benefit the municipalities became a common goal as state government purchases many goods and services that municipalities also purchase.

Since its inception, the MPP, which is comprised of representatives from the Operational Services Division (OSD), Information Technology Division (ITD), the Inspector General's Office (IG) and several municipalities, has solicited and aggregated local government purchasing priorities. MPP is currently sourcing several of these priorities that will benefit local government and school districts. As an example, the MPP has established the first Statewide Contract for heavy duty equipment and is currently evaluating responses for a Statewide Contract for school buses that will directly benefit municipalities. Some examples of Statewide Contracts coming up for bid that could also benefit municipalities include:

office supplies, office furnishings, electricity, temporary help, and information technology staff augmentation.

The MPP program is located within the Executive Office for Administration and Finance, Operational Services Division. Be on the lookout for notices on Comm-PASS about the MPP. If you are interested in joining the MPP group, participants from municipalities are always welcomed. The next monthly meeting will be held on April 3rd, 2013 from 11:30 am to 1:00 pm at OSD. For all questions, please contact Kathleen Reilly, Director of Strategic Sourcing Services: Kathy.Reilly@state.ma.us.

March Municipal Calendar

1	DOR/MDM-TAB	Notification of Cherry Sheet Estimates for the Following Year (pending action taken by the Legislature) The Cherry Sheet is an estimate of: 1) Receipts - local reimbursement and assistance programs as authorized by law and appropriated by the General Court; and 2) Assessments - state and county assessments and charges to local governments. All amounts listed on the Cherry Sheet are estimates. Actual receipts and charges are determined based on detailed formulas or guidelines for each program. Cherry Sheets are posted on the DLS website and updated at each juncture of the state budget process.
1	Personal Property Owner	Submit Form of List This is a listing of all personal property filed by the owner with the Assessors each year for the purpose of determining taxes in the next fiscal year. The return is due on or before March 1, but the deadline may be extended by the Assessors to a date no later than the date abatement applications are due.

1	Charitable Organization	Submit 3ABC Forms This is a return of property held for charitable purposes filed by a charitable organization with the Assessors each year in order to be eligible for exemption from taxation for the next fiscal year. The return is due on or before March 1, but the deadline may be extended by the Assessors to a date no later than the date abatement applications are due.
1	DOR/BLA	Filing Deadline for Telecommunications Forms of List
31	State Treasurer	Notification of Quarterly Local Aid Payment on or Before March 31